IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALNO. 87 OF 1998

Mr. Vassu Shiva Shirodkar,
s/o Shri Shiva Shirodkar,
major, married,
r/o house No.353,
Navelim, Dongri, Margao,
Goa. ... Appellant.

VERSUS

1. Mr. Bhanudas Datta Naik
(since deceased):

1(a) Smt. Bhanumati Bhanudas
Naik, widow.

1(b) Shri Prasad Bhanudas
Naik - son.
Both r/o H.No.529,
Khursachi Ghol,
Santa Cruz, Goa.

2. United India Insurance
Co. Ltd., Mascarenhas Bldg.,
Panaji, Goa. ... Respondents.

Mr. A.R. Kantak, Advocate for the Appellant.

Mr. E. Afonso, Advocate for the Respondent No.2.

CORAM: N.A. BRITTO, J.

DATE OF RESAERVING THE JUDGMENT: 31.03.2004.
DATE OF PRONOUNCING THE JUDGMENT: 6.04.2004

J U D G M E N T :

This appeal is directed against the Judgment/Award dated 9.6.1998 of the learned Motor

Accident Claims Tribunal, Panaji.

2. Some facts are required to be stated to dispose of the present appeal.

3. The appellant was the claimant in Claim Petition filed by him on 24.11.92 under Section 166 of the Motor Vehicles Act, 1988. The case of the claimant was that on 3.3.92 at about 20.45 hours when the claimant was proceeding with his Enfield Motor cycle bearing No.GDC-8621 from Margao to Panaji direction, a truck bearing No.GDS-6005 driven by the respondent No.2 Bhanudas Datta Naik (since deceased) in a rash and negligent manner dashed the motor cycle of the claimant causing injuries to the claimant.

4. On the other hand, the case of the respondents was that the respondent No.1 was driving his truck against the slope and in a very slow speed carefully. The respondent stated that there were two more persons on the said Enfield Motor cycle at the relevant point of time and that the claimant was driving the said motor cycle in a fast speed and in a rash and negligent manner down the slope and lost control of his motor cycle being imbalanced by the other two pillion riders

on his motor cycle and in that process slipped on the road and then dragged on the road and in that process they might have sustained injuries. The respondent stated that the motor cycle was nowhere in the vicinity of the said truck and therefore there was no question of the truck being involved in the accident. In other words, the case of the respondents was that their said truck was not at all involved in the accident.

5. The learned MACT framed three issues and it is the finding regarding the first issue which is challenged in the present appeal i.e. that the claimant had failed to prove that there was a collision between the truck and the motor cycle.

6. The claimant had examined himself in support of his case. Likewise the claimant had examined the I.O. who had conducted the panchanama (CW.3), the panch witness (CW.4) and one Babu S. Langote (CW.5). The learned MACT has discussed at length the evidence of the claimant vis a vis the evidence of CW.5 Langote and has come to the conclusion that there was no collision between both the said vehicles.

7. According to the claimant he was accompanied by

one Tilu Fernandes whom the claimant has chosen not to examine in support of his case and without any apparent reason. The claimant apparently examined CW.2 Dilip Hegde who stated that he was the pillion rider on the motor cycle driven by the said CW.5 Langote. However, the claimant did not examine CW.2 after his evidence was adjourned because of lack of time on 7.3.96. Since the claimant has not examined the said Shri Tilu Fernandes who, according to the claimant was with him on the said motor cycle and that too without any apparent reason, this was a fit case to draw an adverse inference against the claimant for non-examination of the said Tilu Fernandes. Moreover, it is also to be noted that CW.3 A.S.I. D'Souza had clearly stated in his evidence that the said Tilu Fernandes had not stated anything about the contact of the motor cycle with the truck. It is therefore obvious that the said Tilu Fernandes was not prepared to support the case set up by the claimant. If CW.5 Langote has stated, referring to the pillion rider and obviously to CW.2 Hegde, that the said pillion rider whom he had given a lift was not knowing his name one fails to understand as to how CW.2 Shri Hegde made his presence in the claim petition only to disappear soon thereafter. Adverse inference also ought to have been drawn against

the claimant for not continuing with the examination of CW.2 Shri Hegde.

8. The claimant examined CW.3 A.S.I. D'Souza in support of the panchanama and the said sketch. Admittedly CW.3/B is not the sketch prepared by him in this case and the said sketch is at page 125 of the record and proceedings of the MACT. It is important to note tht ASI Shri D'Souza had filed a F.I.R. against the claimant himself for having driven his motor cycle in a rash and negligent manner. Obviously CW.3 ASI D'Souza has not supported the case of the claimant. He has supported the panchanama prepared by him and which shows that there were scratches/drag marks marks to the extent of 53'4" from the place where the motor cycle is seen fallen on the road. CW.4 Sachin has also supported the said panchanama and the sketch . CW.3 A.S.I. D'Souza and CW.4 Sachin have not supported the case of the claimant. In fact, CW.4 in his cross-examination has gone to the extent of stating that he had also seen the accident but had not seen the truck dashing on the motor cycle, but he had only seen the motor cycle falling on the road and sliding further and producing the said scratches.

9. Learned Advocate Shri Kantak on behalf of the claimant has submitted that the claimant after the accident was taken to the hospital, while the panchanama was prepared on the next day and there are serious doubts whether the motor cycle had remained in the position shown in the panchanama and sketch during the night. It is also submitted by Shri Kantak that CW.4 was panch witness brought in on the next day to conduct the panchanama and could not have been a person present when the accident took place. It is to be noted that both CW.3 ASI D'Souza as well as CW.4 Sachin are the witnesses examined by the claimant to support his case. The claimant took no steps to declare either of the said two witnesses hostile and cross/examine them. There was no reason for CW.3 ASI D'Souza not to record the panchanama and the sketch in a manner different from the manner he has recorded the panchanama and the sketch. After all he was doing his public duty in recording the said panchanama and the sketch and it has got to be presumed that he recorded the said panchanama and the sketch correctly and only because they do not support the story set up by the claimant, it does not mean that the said panchanama and the sketch are of doubtful character. The said panchanama and the sketch do not support the case of

the claimant and so do the said two witnesses examined by the claimant to prove the said panchanama and the sketch. The contention that the said scratches/drag marks are not those of the motor cycle of the claimant cannot now be accepted for the first time even without a suggestion being put in that respect either to CW.3, ASI D'Souza or CW.4 Sachin. It is well said that the witnesses may lie, but the circumstances do not. The scratches/drag marks of the motor cycle falsify the case of the claimant. Similarly, the fact that there were no marks on the said truck, also falsifies the case of the claimant. In case the motor cycle of the claimant had dashed on the left back wheel of the truck I do not think that either the motor cycle or the truck would have been found in the position shown in the panchanama and the said sketch. The fact that the rear wheel of the said motor cycle was found punctured also throws a doubt on the veracity of the case set up by the claimant. It is certainly more probable that the front portion of the motor cycle of the claimant would have been damaged in case there was a dash given in the manner alleged by the claimant.

10. The presence of CW.5 Langote has been rightly doubted by the learned MACT. It is to be noted that

the claimant located CW.5 Langote only after about 5 years of the date of accident and five months prior to the date of examining him before the Tribunal. Cw.5 Langote stated that the truck suddenly took a turn on the curve towards the right almost taking a 'U' turn when such was not the case of the claimant. CW.5 claims tht he was 5 metres behind the motor cycle of the claimant when the accident occurred, but did not explain as to what he did when the Claimant's motor cycle dashed the left rear wheel of the truck i.e. whether he also stopped immediately or whether he like the claimant went or dashed against the truck since otherwise it is claimed by him that he was driving at the same speed as that of the claimant. Cw.5 has claimed that the claimant was riding the motor cycle on the left side of the road and assuming that the dash was given on the back wheel, again on the left side of the road,it is unlikely that the claimant's motor cycle would have been found fallen almost in the middle of the road. CW.5 Longote does not even know the make of the truck which was involved in the accident though he gives the colour of the truck as red. He has stated that after the impact the truck went about 8 to 10 metres and here again he is falsified by the panchanama and the sketch. CW.5 has stated that the claimant was

injured on the left side of his head and left leg, but the medical certificate on record shows otherwise. He has stated that the motor cycle was lying at a distance of about 1 to 1-1/2 metre from the truck and here again he is falsified by the panchanama and the sketch. He goes on to say that the motor cycle got rebounded and then fell on the same spot. In case the motor cycle had rebounded after hitting the rear side of the truck, it could not have fallen on the same spot but ought to have fallen elsewhere. He has stated that the motor cycle had applied brakes, but there were no brake marks on the road and this is again highly improbable. He stated that there were no scratch marks on the road and here again he stands falsified by the panchnama and the sketch which has been supported by CW.3 ASI D'Souza and panch witness CW.4 Sachin. CW.5 Langote next stated that the truck had gone off the road, thereby meaning inside the inner road, by about 2 to 5 metres and here again he is not supported by the said panchanama and the sketch. He has stated that tyre of the motor cycle was not punctured and here again he stands falsified by the said panchanama. CW.5 claimed that he had given a lift to a person who did not know his name and if that is so, one does not know how the claimant secured the presence of CW.2 Dilip to be examined by him partly and

thereafter abandoned him. It is to be noted that the statement of CW.5 Langote was not at all recorded by the I.O. C.W.3 Shri D'Souza. The learned MACT has meticulously discussed the evidence produced on behalf of the claimant to come to the conclusion that the claimant had failed to prove that there was an impact between the motor cycle driven by him and the truck driven by respondent no.1 (since deceased) at the time of the accident. The learned MACT after meticulously considering the evidence of CW.5 Langote has doubted his presence at the scene or that he had witnessed the accident. In my opinion no fault could be found with the findings given by the learned MACT as far as Issue No.1 was concerned. Having sympathy for the victims of the accident is one thing but to encourage falsehood in support of false cases,is quite another thing.

11. I find that there is no merit in this appeal and therefore the same is hereby dismissed and considering the facts, with no order as to costs.

N.A. BRITTO, J.

sl.